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CASE TP/4-22108/A/PFE 287

**CERTIFICATE OF MAILING**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF
BIANCAMARIA PROZZO ET AL
APPLICATION NO: 09/688,066
FILED: OCTOBER 13, 2000
FOR: COMPOSITIONS FOR PRETREATING FIBRE MATERIALS

Group Art Unit: 1751
Examiner: P. Kumar

Response Under 37CFR 1.116.
Expedited Procedure.
Examining Group 1751



Assistant Commissioner for Patents
Washington, D.C. 20231

**RESPONSE UNDER 37 CFR 1.116**

Sir:

This Response is being filed in reply to the Office action (Final Rejection) mailed on January 14, 2003, the Response to which is being mailed within the shortened statutory period for response.

No fee, petition, or certification is required. The Commissioner is authorized to charge any fee due, or credit any overcharge, as a result of this Amendment to Deposit Account No. 03-1935.

## REMARKS

Claims 1-9 and 11 are pending in this application and are presented for reconsideration.

Claims 1-8 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Stringer et al. (U.S. Patent 5,858,955). Further, claims 9 and 11 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Gosselink et al. (U.S. Patent 5,691,298) in view of Stringer et al. Applicants respectfully traverse both of these rejections for the reasons which follow.

The compositions claimed according to instant claim 1 must contain at least 4 components, A to D, that is they must contain all of these components.

Applicants have made it clear in the introduction to the description that important factors in the pretreatment of textiles are primary wettability and rewettability, which have to be at a desired level without the drawback of excessive foam formation. These properties have been optimized by means of the instant compositions. Neither Stringer nor Gosselink mention at all that primary wettability and rewettability have to be optimized, let alone how this can be done. That they don't mention it is in no way astonishing since neither of them describes processes for the pretreatment (according to applicant's definition in the disclosure) of fiber materials.

Applicants have furthermore disclosed that certain drawbacks will be encountered if compositions are used in which all 4 of the components of instant claim 1 are not present. That is, applicants have described for each of components A, B, and C, what will happen if one component is absent while the other two are nonetheless present.

Thus, the instant compositions are novel and inventive over each of the prior art documents wherein only compositions that do not contain all 4 components of instant claim 1 are disclosed.

Applicants acknowledge that the Stringer reference, US Patent 5,858,955, generically discloses groups of compounds under which each of components A, B and C of instant claim 1 fall. But nowhere does Stringer disclose, either in the specification or in Example 3, any mixture that contains all 3 of A, B and C. Applicants aver that the formulation according to the table of Example 3, pointed to by the examiner, does not contain either component B or component C. This will be explained in more detail below.

Since the groups of compounds Stringer discloses comprise literally thousands of individual components, among which are instant components A, B, and C, millions of possibilities of combining these components exist. Applicants aver that the likelihood of producing a claimed composition from the shotgun disclosure of this patent would be about the same as the likelihood of discovering the combination of a safe from the mere inspection of the dials thereof (*Ex parte Garvey*, 41 USPQ 583, PO Bd. of App.). There is absolutely nothing in the reference that would motivate one skilled in the art to select these particular components as the examiner has done.

Why would one skilled in the art have chosen exactly the 4-component combination according to instant claim 1 when faced with the problem of developing formulations for the pretreatment of textile fibers, a problem not even addressed by either reference? Applicants note that the purpose of the Stringer formulations is substantially different from textile pretreatment. Thus, the argumentation of the examiner appears to be based on hindsight. However, it is well established that hindsight selection from a broad shotgun type disclosure would not guide one skilled in the art to choose applicants restricted class of compositions from among the host of possible combinations so as to make said class obvious within the meaning of 35 U.S.C. § 103. See *Ex parte Strobel et al.*, 160 USPQ 352 (PTO Bd. of App., 1968), cited with approval numerous times by the CCPA and the CAFC.

Stringer does mention ethoxylated alcohols (= instant component B) and ethoxylated/propoxylated alcohols (= instant component C), but only as examples of individual components. Stringer does not disclose the simultaneous use of these 2 components. On the other hand, applicants have disclosed that drawbacks will occur if either one of these 2 components is missing from the inventive compositions, and the claims require that both be present.

From Stringer it would not have been obvious to use a combination of these 2 classes of ingredients when compositions for the pretreatment of textiles were to be developed, since the Stringer compositions serve quite a different purpose where no advantage to the combination is taught or suggested. Stringer does not disclose any compositions that contain instant components B and C, let alone compositions that contain instant components A and B and C.

The "Pluronics" mentioned by the examiner are disclosed in Stringer. But Pluronics neither correspond to instant component B nor to component C since they only contain ethoxylate and/or

propoxylate moieties, but no alkyl radicals according to the definition of $R^3$ in instant component B and component C.

Claims 9 and 11, directed to a process for the pretreatment of fiber materials, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gosselink in view of Stringer. The secondary reference, Gosselink, US Patent 5,691,298, deals with esters for soil release purposes and with laundry detergents containing these esters. However, since Stringer does not disclose or even render obvious compositions according to instant claim 1, it could not have been obvious from Stringer to use compositions according to claim 1 in Gosselink's laundry process.

Furthermore, the Gosselink processes are not pretreatment processes according to the present invention, namely treatments of textile fibers before the dyeing and finishing operations. Rather, the Gosselink "pretreatment" is obviously a process for soil release treatment of previously laundered fabrics (see col. 41, line 57), where the requirements the formulations used have to meet are substantially different from the requirements in the case of pretreatment of textile fibers according to the present application.

Since none of claimed components A to D contains any ester moieties, the esters of Gosselink, even if they contained incorporated sulfonate or ethoxylated moieties, would be of no relevance whatsoever with regard to the present invention.

Only the "detergent compositions" of Gosselink (Gosselink's claims 17 to 25 and the description in column 30, line 35 up to column 31, line 21) and the "detersive surfactants" described therein need to be considered. Gosselink does not describe compositions that contain all 4 of components A to D in these passages. In neither of Gosselink's examples there are disclosed or rendered obvious such compositions. Hence Gosselink fails to heal the deficiencies of Springer.

Additionally, why would one skilled in the art have been *motivated* to modify the Gosselink compositions by adding the missing components according to claim 1, to obtain compositions which contain all 4 components A to D? Since the Gosselink compositions evidently serve another purpose, namely household laundry applications, whereas the compositions according to the invention have been developed for the industrial pretreatment of fiber materials in which the special requirements (primary wettability and rewettability) have to be met, as mentioned in the description, it appears the

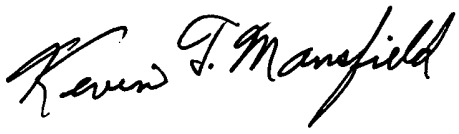
sole motivation to modify the Gosselink compositions by adding the missing components according to claim 1 is hindsight, which is a clearly inadequate basis for a rejection under 35 U.S.C. § 103(a).

Reconsideration and withdrawal of all grounds of rejection of claims 1-9 and 11 is respectfully solicited in light of the remarks *supra*.

Since there are no other grounds of objection or rejection, passage of this application to issue with claims 1-9 and 11 is earnestly solicited.

Applicants submit that the present application is in condition for allowance. In the event that minor amendments will further prosecution, Applicants request that the examiner contact the undersigned representative.

Respectfully submitted,



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